MetLife Bank NA

Legal Department

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Sent Electronically To: regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1176 - Proposed Rule – Subpart D of Regulation CC

Dear Ms. Johnson:

I am writing on behalf of MetLife Bank, N.A. to comment on the proposed regulations to be codified as a new Subpart D of Federal Reserve Regulation CC. MetLife Bank, N.A. is a $1.3 billion national bank headquartered in Bridgewater, New Jersey.

My comments are limited to two issues. The first is the absence in the proposed regulations for an effective mechanism to implement proposed Section 229.55 (Expedited Recredit Procedures for Banks). The second is whether or not the Federal Reserve should incorporate the proposed revisions to the Uniform Commercial Code (U.C.C.) regarding remotely created items.

PROPOSED SECTION 229.55

The "expedited re-credit" process proposed by Section 229.55 will not work in practice as it contains no "enforcement mechanism" to ensure that banks respond on a timely basis to the claims. Hence, many of the banks in this country will find it impossible to obtain the expedited re-credit called for by proposed Section 229.55. It has been and continues to be my experience that it is next to impossible to find the right person (or department) in some of the larger banks in this country to communicate with about a problem or issue. Hence, it will be impossible for many banks to find the correct person or department to communicate with concerning a claim for expedited re-credit.

The typical "forged endorsement" and "late return" claims currently handled between banks are examples of the problems to come. In many cases, a bank finds that its claim is lost or misrouted inside the receiving bank. In other cases, the claimant bank is met with repeated excuses for non-payment. This is especially true of some of the largest banks in this country. It is also my belief that some banks simply "stonewall" claims from other banks based on a belief that the other bank will eventually give up and go away because it cannot afford to litigate the claim. To give a recent example, it took MetLife Bank 14 months to resolve a $700 "late return" claim with one of the "top 10" banks.

The unwillingness/refusal of some banks to timely respond to forgery or "late return" claims will be worse with respect to proposed Section 229.55 as (1) the dollar amounts of claims for expedited re-credit are likely to be smaller given that consumers generally write checks for smaller dollar amounts and (2) the larger banks are likely (at least initially) to be the indemnifying banks and the smaller banks are likely (at least initially) to be the claimant banks.

The proposed "10th business day" time frame under proposed Section 229.55(c) for the indemnifying bank to re-credit the claimant bank or provide the original check or explain why it is not obligated to do either is unrealistic. More likely, the claim will go into a "black hole" in the indemnifying bank and it will take far more than 10 business days to even begin to attempt to resolve the claim. If this process is to work, it needs "teeth" to make the indemnifying bank respond on a timely basis. The proposed regulation in Section 229.56(a)(1) includes "costs and reasonable attorney's fees and other expenses of representation" to a bank that successfully sues to obtain its indemnity. However, as a practical matter, no bank will retain counsel and file a lawsuit over an unresolved $200.00 claim.

The Federal Reserve banks must take an active role in the conduct and management of the expedited re-credit process to make it work effectively. One possible method is to implement a process similar to the "challenge" process currently in place at the Federal Reserve banks for "late return claims." *See Operating Circular 3, Paragraphs 18.4 and 18.5*. Proposed Section 229.55 could be changed so that a claimant bank would send its claim to the Federal Reserve bank in its district. In turn, the Federal Reserve bank would send the claim to the indemnifying bank. If the indemnifying bank did not properly respond on a timely basis, then the Federal Reserve bank would debit the account of the indemnifying bank for the amount of the claim and credit the account of the claimant bank. In that way, indemnifying banks could not stonewall, delay or ignore claims.

Alternatively, if the routing of the claims through the Federal Reserve banks is deemed to be too cumbersome given the very short 10 business day time period, then the Federal Reserve banks can provide another remedy for the claimant banks. Each bank could be required to print on the substitute check or prominently post on its website or file with the Federal Reserve bank in its district a specific address to which claims for an expedited re-credit should be sent. If the indemnifying bank failed to respond to the claim on a timely basis, the claimant bank could then file an affidavit with the Federal Reserve bank in its district advising that the claim was sent, the claim was complete and that the indemnifying bank has failed to respond with the 10 business day period. Upon receipt of this affidavit from the claimant bank, the Federal Reserve bank would credit the account of the claimant bank for the amount of the claim and debit the account of the indemnifying bank. An indemnifying bank that believes its account was wrongfully charged could bring suit against the claimant bank within one year to recover the charge. In this way, an indemnifying bank that does not promptly respond to a claim for an expedited re-credit will have the burden of resorting to litigation to recover its payment.

Absent a solution short of litigation to require indemnifying banks to re-credit the claimant bank or to provide the original check or explain why it is not obligated to do either, claimant banks will be forced to write off most smaller dollar claims as losses. This result will be unfair as the banks that benefit from substitute checks will not absorb the losses resulting from their use.

REMOTELY-CREATED DEMAND DRAFTS

The Board has also requested comments on the 2002 proposed revisions to Articles 3 and 4 of the U.C.C. regarding remotely-created consumer items approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. These U.C.C. revisions define a remotely-created consumer item to mean ``an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.'' The U.C.C. revisions would require a person who transfers a remotely-created consumer item to warrant that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

MetLife Bank wholeheartedly recommends that the Board incorporate this proposed revision to the U.C.C. into Regulation CC. Today, most banks use signature verification procedures that either look at signatures on checks over a certain dollar threshold or review for proper signature an extremely small percentage of all checks. As a result, virtually all remotely-created consumer items are paid by the payor banks without inspection and without any attempt to ascertain prior to payment whether or not the item was authorized by the bank’s customer. Accordingly, when consumers later claim that the item was unauthorized, the payor bank takes the loss under the rule of *Price v. Neal*, 97 Eng. Rep. 871 (K.B. 1762) and the final payment rule of the U.C.C. which prohibits the return of the item after the payor bank’s midnight deadline.

The current losses borne by payor banks caused by these remotely-created consumer items are unfair. The losses are more appropriately borne by the bank of first deposit as it is the bank of first deposit that is doing business with the creator of these items and profits from its account relationship with the creator. Additionally, under the recent Customer Identification Program regulations promulgated by the U.S. Treasury pursuant to Section 326 of the USA PATRIOT Act, it is the bank of first deposit that has the obligation to ascertain the identity of the person or entity depositing these remotely-created consumer items. Accordingly, it is the bank of first deposit that should bear the losses resulting from the deposit of remotely-created consumer items that were not authorized by the consumer.

In addition to adopting a rule to make the bank of first deposit liable for remotely-created consumer items that are not authorized by the consumer, the rule must also have some mechanism to ensure that the bank of first deposit honors its warranty and pays the claims resulting from the deposit of unauthorized items. My comments under proposed Section 229.55 are equally applicable here. Most of the claims arising out of remotely-created consumer items are likely to be for dollar amounts of less than $1,000.00. Accordingly, even if the rule was to provide for a mandatory award of attorney's fees to the prevailing party, most banks will chose not to litigate for very small amounts. An administrative process needs to be put in place to ensure that claims are paid on a timely basis.

Thank you for the opportunity to provide comments.

Sincerely,

/s/ James J. Kreig

James J. Kreig
General Counsel

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cc: Jeri R. Ware, Compliance Officer, MetLife Bank
Robert C. Franz, Operations Officer, MetLife Bank